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In the Supreme Court of the United States.

OCTOBER TERM, 1918.

EUGENE V. DEBS, PLAINTIFF IN error,
v.
THE UNITED STATES OF AMERICA, defendant in error.
} No. 714.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

On June 18, 1918, the plaintiff in error, Eugene V. Debs (hereinafter referred to as the defendant) made a speech at Canton, Ohio, which forms the basis of the charge on which he was tried and convicted. This was the period, it will be remembered, of the great 1918 German offensive when the situation on the battle fields of France and Belgium called for the greatest and speediest possible mobilization of men for the Army. On May 20, 1918, Congress had passed the act covering into the draft

men who had reached the age of twenty-one subsequent to the original registration of June 5, 1917. Draft boards were being called upon for their maximum of activity and the recruiting service of the Army was actively at work throughout the country. It was this period of crisis in the military situation which the defendant chose for his Canton speech.

The speech was delivered out-of-doors in a public park of the city of Canton, and constituted the closing event of a convention of the Ohio State Socialist Party. It was delivered from a band stand. No American flag was displayed upon the band stand nor in the park. The audience was variously estimated at from two hundred and fifty to fifteen hundred persons. Young men of draft ages predominated or at least were present in large numbers, four of whom were identified in the indictment by name and two of whom took the stand. (R. 167, 190, 223, 225, 231.)

At a short distance from this park was the Canton city workhouse, in which were confined Alfred Wagenknecht, Charles Baker, and Charles E. Ruthenberg, the three Cleveland men who, at a Socialist meeting in the city of Cleveland, had delivered speeches against the war and the draft which had caused their conviction for counseling and abetting a violation of the draft law, a conviction which was later upheld by this court in 245 U. S. 480. Immediately preceding his address, the defendant had visited these men in the workhouse. He opened his speech with the statement that he was speaking to

and for the working classes, and then referred to his visit to the workhouse in the following words (R. 194):

> I have just returned from a visit over yonder (pointing to the workhouse), where three, three of our most loyal comrades are paying the penalty for their devotion to the cause of the working class. They have come to realize, as many of us have, that it is extremely dangerous to exercise the constitutional right of free speech in a country fighting to make democracy safe in the world.

A minute or so later he added (R. 194, 195):

> They are simply paying the penalty that all men have paid in all the ages of history for standing erect, and for seeking to pave the way to better conditions for mankind.
>
> If it had not been for the men and women who in the past have had the moral courage to go to jail, we would still be in the jungles.

Then followed a general reference to the Socialist movement, its situation and opportunities, beginning with the sentence "There is but one thing that you have to be concerned about and that is that you keep foursquare with the principles of the international Socialist movement." (R. 195.) The course which he advocated for the members of the working classes in the war between them and what he called the exploiting classes may be illustrated by the following passage, which again included a reference to Baker, Wagenknecht, and Ruthenberg (R. 196):

> It is true that these are anxious, trying days for us all—testing days for the women and

men who are upholding the banner of the working class in the struggle of the working class of all the world against the exploiters of all the world; a time in which the weak and cowardly will falter and fail and desert. They lack the fiber to endure the revolutionary test; they fall away; they disappear as if they had never been. On the other hand, they who are animated with the unconquerable spirit of the social revolution, they who have the moral courage to stand erect and assert their convictions; stand by them; fight for them; go to jail or to hell for them, if need be, and—they are writing their names, in this crucial hour—they are writing their names in fadeless letters in the history of mankind.

Those boys over yonder—those comrades of ours—and how I love them—aye, they are my younger brothers; their very names throb in my heart, and thrill in my veins, and surge in my soul. I am proud of them; they are there for us; and we are here for them. Their lips, though temporarily mute, are more eloquent than ever before; and their voice, though silent, is heard around the world.

Then followed (R. 196–203) a picture of the contrast between the patriotism of militarists, junkers, and other types of those called exploiters and the patriotism of the socialist working class leaders. Persons named as illustrations of the one group were Theodore Roosevelt, the German Kaiser, various governmental bodies, Wall Street junkers, and of the other group, Kate Richards O'Hare, Scott Nearing,

and others. The reference to Kate Richards O'Hare (R. 200, 201) was as follows:

> Let me review another bit of history in connection with this case. I have known Kate Richards O'Hare intimately for twenty years. I know her record by heart. Personally, I know her as if she were my own younger sister. All who know her know she is a woman of absolute integrity. And they know, too, that she is a woman of courage, and they know that she is a woman of unimpeachable loyalty to the Socialist movement. When she went out into Dakota and made her speech, followed by plain-clothes men in the service of the Government intent upon encompassing her arrest and her prosecution and her conviction—when she was out there, it was with the knowledge that sooner or later they would accomplish their purpose. She made a certain speech, and that speech was deliberately misrepresented for the purpose of securing her conviction. The only testimony against her was that of a hired witness. And when thirty farmers, men and women, who were in Bismarck to testify in her favor, to swear that she had never used the language she was charged with having used, the judge refused to allow them to go upon the stand. This would seem incredible to me, if I had not had some experience of my own with a Federal court.

He then pictured the Bolsheviki revolution in Russia as the acme of the working class movement

which he was praising and glorifying, saying (R. 20
204):

> And the very first act of the immortal revo
> lution was to proclaim a state of peace wit
> all the world, coupled with an appeal, not t
> the kings, not to the emperors, not to th
> rulers, not to the diplomats, but an appeal t
> the people of all nations. There is the ver
> birth of Democracy, the quintessence of free
> dom. They made their appeal to the peopl
> of all nations, the allies as well as the centra
> powers, to send representatives to a conferenc
> to lay down terms of peace that should b
> Democratic and lasting. Here was a fine—
> here was a fine opportunity to strike a blow
> to make Democracy safe in the world. Wa
> there any response to that noble appeal
> And here let me say that that appeal will be
> written in letters of gold in the history of the
> world. Was there any response to that ap-
> peal? (From the crowd "No.") Not the
> slightest.

Then, in the course of a discussion of the secret treaties between the allies discovered by the Bolshevist leaders, the defendant proceeded (R. 204):

> I have a copy of these treaties showing that
> the purpose of the allies is exactly the pur-
> pose of the central powers. And that is the
> purpose that has always been the purpose of
> war.
>
> Wars have been waged for conquest, for
> plunder. In the middle ages the feudal lords,
> who inhabited the castles whose towers may

still be seen along the Rhine—whenever one of these feudal lords wished to enrich himself, then he made war on the other. Why? They wanted to enlarge their domains. They wanted to increase their power, their wealth, and so they declared war upon each other. But they did not go to war any more than the Wall Street junkers go to war. The feudal lords, the barons, the economic predecessors of the modern capitalist, they declared all the wars. Who fought the battles? Their miserable serfs. And the serfs had been taught to believe that when their masters declared and waged war upon one another, it was their patriotic duty to fall upon one another, and to cut one another's throats, to murder one another for the profit and the glory of the plutocrats, the barons, the lords who held them all in contempt. And that is war in a nutshell. The master class has always declared the war; the subject class has always fought the battles; the master class has had all to gain, nothing to lose, and the subject class has had nothing to gain and all to lose, including their lives. They have always taught you that it is your patriotic duty to go to war and to have yourselves slaughtered at a command. But in all of the history of the world, you, the people, never had a voice in declaring war. You have never yet had. And here let me state a fact—and it can not be repeated too often—the working class who fight the battles, the working class who made the sacrifices, the working class who shed the

blood, the working class who furnis
corpses, the working class have never y
a voice in making peace. It is the
class that does both. They declare
they make peace.

"Yours not to ask the question wh
Yours but to do and die."

That is their motto, and we object o
part of the awakened workers.

If war is right, let it be declared b
people—you who have your lives to lose
certainly ought to have the right to d
war, if you consider a war necessary.

Then followed a discussion of the Rose P
Stokes case, in which the defendant said (R.

Rose Pastor Stokes. And when I me
her name, I take off my hat—mental
least. (He spoke without a hat on his h
Here is another heroic and inspiring com
She had her millions of dollars. Did i
strain her an instant? Her devotion t
cause had arrested all consideration
financial or an economic nature. She
out to render her service to the caus
this day of crises, and they sent her t
penitentiary for ten years. Think o
Ten years! What had she said? Not
more than I have said this afternoo
want to admit—I want to admit, wit
argument, that if Rose Pastor Stok
guilty, so am I. If she is guilty, I wou
be cowardly enough to plead innocence.
if she ought to be sent to the penitent
for ten years, so ought I.

> What did she say? Why, she said that a Government—a Government could not serve both the profiteers and the victims of the profiteers. Isn't that true? Certainly.

Then comes (R. 207, 208) a passage of passionate praise for minorities and class-conscious proletarians, followed by an appeal to join the Socialist Party, containing the following words, "you need to know that you are fit for something better than slavery and cannon fodder." In the course of this appeal for joining the Socialist Party, the defendant returned to the subject of Baker, Ruthenberg, and Wagenknecht in the following passage (R. 209):

> There is a great deal of hope for Baker, Ruthenberg, and Wagenknecht, but for the fellow that is nobody there is no pardoning power. He is 'in' for life. Anybody can be nobody, but it takes a man to be somebody.

Adding a moment later (R. 209, 210):

> You are in a crucible to-day, Mr. Socialist. You are going to be tried, to what extent no one knows. If you are weak fibered, that weakness will be sought out, and located. And if, through that weakness, you are conquered, you may be driven out of the Socialist movement. We will have to bid good-by to you. You are not the stuff of which revolutionists are made. We are sorry for you unless you happen to be an intellectual. The intellectuals, a good many of them, are already gone. No—no loss on our side, nor any gain of theirs.

Throughout this part as well as the remainc the address, the contrast between the capitalist exploiting class on one hand and the working on the other is constantly drawn, permeating a every sentence. For instance (R. 210 and 211), paying his respects to the owners of the railroa one species of the exploiters, he turns to an exploiting group, namely the landlords, sayin the course of this portion of the address (R. 21

> They are talking about your patriotic Among other things, they are advising y cultivate war gardens—cultivate a war den. While they are doing this, a Go ment war report shows that practically two per cent of the arable, tillable soil is out of use by the profiteers, by the land m ulators—held out of use. They, themse do not cultivate it. They could not if would. They don't allow others to culti it; they keep it idle to enrich themselve pocket the hundreds of dollars of unea increment. Who is it that makes their valuable while it is fenced in and kept o use? It is the people. Who pockets tremendous value? The landlords. The l lords. Who is the patriot? And while are upon the subject, I want you to think u the term "landlord." Landlord, lord of land? This lord of the land is a great pat This lord, who professionally owns the ea tells you that he is fighting to make the w safe for democracy—he, who shuts all hum ity out; and he who profiteers at the exp of the people who have been slain by m

> plied thousands, under the pretense of being the great patriot he is—he, who is your arch-enemy; he it is that you need to wipe from power. It is he, it is he that is a menace to your loyalty and your liberty far more than the Prussian junker on the other side of the Atlantic ocean."

Then follows an attack upon another group of exploiters, the owners of coal mines and an advocacy of the socialization of the ownership of mines and then, by way of contrast, a laudation of the I. W. W., in the course of which the defendant said (R. 213):

> But, when the war press says war, you may rest assured that every pulpit in the land will say war. And when Wall Street says peace, they will all say peace, because they are simply instruments of Wall Street. The pulpits in every age have been on the side of every ruling exploiting class, and not on the side of the people.

The picture of a bitter conflict between the exploiting classes and the working classes is carried throughout the remainder of the address, which ends with an appeal to all members of the working-class to do their duty in this time of crisis and emergency. The nature of this duty as described by the defendant may be judged from the following passage, occurring toward the end of the address (R. 214, 215):

> And now for all of us to do our duty. The call is ringing in our ears. If you do, it is your duty to respond; and you can not falter

without being convicted of treason
selves. Do not worry, please; don
about the charge of treason to your
but be concerned about the trea
involves yourselves. Be true to yo
and you can not be a traitor to a
cause on earth.

The indictment originally contained 10 co
based upon section 3, Title I of the Espio
(act of June 15, 1917, c. 30, 40 Stat.
amended by the act of May 16, 1918 (Pub.
65th Cong. 2d sess.), the full text of which
found in the margin.[1] By virtue of withdra

[1] SEC. 3. Whoever, when the United States is at war, sh
make or convey false reports or false statements with intent
with the operation or success of the military or naval forces o
States, or to promote the success of its enemies, or shall willfu
convey false reports or false statements, or say or do anythin
way of bona fide and not disloyal advice to an investor or inv
intent to obstruct the sale by the United States of bonds or
ties of the United States or the making of loans by or to the U
and whoever, when the United States is at war, shall willful
attempt to cause, or incite or attempt to incite, insubordination
mutiny, or refusal of duty in the military or naval forces of
States, or shall willfully obstruct or attempt to obstruct the r
enlistment service of the United States, and whoever, when
States is at war, shall willfully utter, print, write, or publish a
profane, scurrilous, or abusive language about the form of go
the United States, or the Constitution of the United States,
tary or naval forces of the United States, or the flag of the Un
or the uniform of the Army or Navy of the United States, or a
intended to bring the form of government of the United States,
stitution of the United States, or the military or naval forces of
States, or the flag of the United States, or the uniform of th
Navy of the United States into contempt, scorn, contumely, o
or shall willfully utter, print, write, or publish any language
incite, provoke, or encourage resistance to the United States,
mote the cause of its enemies, or shall willfully display the
foreign enemy, or shall willfully by utterance, writing, print
cation, or language spoken, urge, incite, or advocate any cur
production in this country of any thing or things, product o
necessary or essential to the prosecution of the war in which

verdicts of not guilty, seven of these counts were eliminated, leaving three counts, namely the third, fourth, and seventh counts, in the case.

The seventh count charged that the defendant uttered language intended to incite, provoke, and encourage resistance to the United States and to promote the cause of its enemy, namely, the German Empire. The Government, however, is not convinced that the facts of the case clearly demonstrate a violation of this clause of the law and will make no further contentions concerning the seventh count.

This leaves counts three and four. The third count (R. 29) charges the defendant with having caused and attempted to cause and incited and attempted to incite insubordination, disloyalty, mutiny, and refusal of duty in the military and naval forces of the United States, in that he made the said Canton speech, the words of the speech being set forth in the indictment. It names two members of the audience of draft age, and alleges that numerous others of the same ages were present.

States may be engeged, with intent by such curtailment to cripple or hinder the United States in the prosecution of the war, and whoever shall willfully advocate, teach, defend, or suggest the doing of any of the acts or things in this section enumerated, and whoever shall by word or act support or favor the cause of any country with which the United States is at war or by word or act oppose the cause of the United States therein, shall be punished by a fine of not more than $10,000 or imprisonment for not more than twenty years, or both: *Provided*, That any employee or official of the United States Government who commits any disloyal act or utters any unpatriotic or disloyal language, or who, in an abusive and violent manner criticizes the Army or Navy or the flag of the United States shall be at once dismissed from the service. Any such employee shall be dismissed by the head of the department in which the employee may be engaged, and any such official shall be dismissed by the authority having power to appoint a successor to the dismissed official.

100461—19——2

It alleges that he made these utterances willfully and "with the intent on his part to cause and attempt to cause and incite and attempt to incite insubordination, disloyalty, mutiny, and refusal of duty in the military and naval forces of the United States."

The fourth count (R. 42) charges the defendant with obstructing and attempting to obstruct the recruiting and enlistment service of the United States, in that he made the said speech, the words of which are set forth in the indictment. It names three of the members of the audience between the ages of eighteen and forty-five, and alleges others of those ages as present. It alleges the defendant willfully uttered the words set forth in the indictment, and "with the intent on his part to obstruct and attempt to obstruct the recruiting and enlistment service of the United States."

Defendant's motion to quash the indictment (R. 139) and demurrer (R. 141) were overruled as to all counts involved in these error proceedings.

In explanation of the defendant's references to the Wagenknecht, Ruthenberg, Baker, Kate Richards O'Hare, and Rose Pastor Stokes cases and as bearing on the question of intent, the Government introduced into evidence, and the court, over the objection of the defendant, admitted so much of the records of the Wagenknecht, Ruthenberg, and Baker cases as showed the nature of the charge upon which they had been prosecuted, tried, and convicted, and copies of the indictments, verdicts, and sentences in the

O'Hare and Stokes cases. (R. 226–228, Government Exhibits 9–15.) The cases against Wagenknecht, Ruthenberg, and Baker arose out of speeches made by them at a public meeting, for which they were convicted of aiding, abetting, counseling, and inducing a violation of the selective service act. The case against Mrs. O'Hare arose out of a speech for which she was convicted of willfully obstructing the enlistment service of the United States. Similarly, the case against Mrs. Stokes arose out of a public address for which she was convicted of attempting to cause insubordination and refusal of duty in the military forces of the United States and obstructing the recruiting and enlistment service of the United States. The sentiments expressed by all of said defendants in these cases, especially the Cleveland cases, bore a striking family likeness to the utterances of the defendant in the instant case.

It appeared in evidence that shortly before his Canton address the defendant Debs was asked concerning the truth of the reports that he had repudiated the so-called "St. Louis platform," being the "war program and proclamation" adopted at the emergency convention of the National Socialist Party at St. Louis, Mo., a few days after the declaration of war with Germany (R. 169). The defendant answered (R. 170, 171, 174) that he approved of that report in spirit and substance at the time of its adoption and still approved of it, although he favored a restatement of some of the aims. Two weeks later

he again stated, in regard to this St. Louis platform, when asked whether he repudiated its platform and principles, "I do not, and, if necessary, I will die for those principles" (R. 218). This platform, together with a minority report of those at the St. Louis meeting who disagreed with it, was sent to the members of the socialist locals throughout the country for a referendum vote. (R. 216, Government Exhibit 2.)

At a meeting in Chicago of the State secretaries of the National Socialist Party, called to discuss the question of a repudiation of or change in the St. Louis platform, the defendant Debs was present and said (R. 221):

> A working man has no place in a capitalist's war such as this. The only war in which I have any interest is that of the workers against the capitalists. They may call me a disloyalist and brand me a traitor, but I shall stick to my principles. The master class pretend to wage this war for democracy, but by persecuting us they have branded this pretention a lie. I honestly hope that there may be no one present here to-day that will want to change the party's former attitude toward the war.

As bearing on the question of his intent in making the Canton speech, the court, over the objection of the defendant, admitted a copy of this St. Louis platform in evidence, including both majority and minority report. (R. 216–8, Government Exhibits 1 and 2.) It constitutes a bitter attack on the war

and an appeal to all socialists to oppose and resist the prosecution of the war and all participation in the war. The following passages are typical of both the attitude to the war and the appeal:

> The Socialist Party of the United States in the present grave crisis, solemnly reaffirms its allegiance to the principle of internationalism and working class solidarity the world over, and proclaim its unalterable opposition to the war just declared by the Government of the United States.
>
> Modern wars as a rule have been caused by the commercial and financial rivalry and intrigues of the capitalist interests in the different countries. Whether they have been frankly waged as wars of aggression or have been hypocritically represented as wars of "defense," they have always been made by the classes and fought by the masses. Wars bring wealth and power to the ruling classes, and suffering, death, and demoralization to the workers.
>
> The Socialist Party of the United States is unalterably opposed to the system of exploitation and class rule which is upheld and strengthened by the military power and sham national patriotism. We, therefore, call upon the workers of all countries to refuse support to their Governments in their wars. The wars of the contending national groups of capitalists are not the concern of the workers. The only struggle which would justify the workers in taking up arms is the great struggle of the working class of the world to free

itself from economic exploitation and political oppression, and we particularly warn the workers against the snare and delusion of defensive warfare. As against the false doctrine of national patriotism we uphold the ideal of international working class solidarity. In support of capitalism, we will not willingly give a single life or a single dollar; in support of the struggle of the workers for freedom we pledge our all.

Our entrance into the European war was instigated by the predatory capitalists in the United States who boast of the enormous profit of seven billion dollars from the manufacture and sale of munitions and war supplies and from the exportation of American foodstuffs and other necessaries. They are also deeply interested in the continuance of war and the success of the allied arms through their huge loans to the Governments of the allied powers and through other commercial ties. It is the same interests which strive for imperialistic domination of the Western Hemisphere.

We brand the declaration of war by our Government as a crime against the people of the United States and against the nations of the world.

In harmony with these principles, the Socialist Party emphatically rejects the proposal that in time of war the workers should suspend their struggle for better conditions. On the contrary, the acute situation created by war calls for an even more vigorous prose-

> cution of the class struggle, and we recommend to the workers and pledge ourselves to the following course of action:
>
> 1. Continuous active and public opposition to the war, through demonstrations, mass petitions, and all other means within our power.
>
> 2. Unyielding opposition to all proposed legislation for military or industrial conscription. Should such conscription be forced upon the people, we pledge ourselves to continuous efforts for the repeal of such laws and to the support of all mass movements in opposition to conscription. We pledge ourselves to oppose with all our strength any attempt to raise money for payment of war expense by taxing the necessaries of life by issuing bonds which will put the burden upon future generations. We demand that the capitalist class, which is responsible for the war, pay its cost. Let those who kindled the fire furnish the fuel.

At the conclusion of the Government's evidence, the defendant moved for a directed verdict, which motion was overruled (R. 232). The defendant introduced no evidence. He personally made his own address to the jury, in the course of which he said (R. 239):

> I have been accused of having obstructed the war. I admit it. Gentlemen, I abhor war. I would oppose the war if I stood alone. When I think of a cold, glittering steel bayonet being plunged in the white, quivering flesh of a human being, I recoil with horror.

I have often wondered if I could take the life of my fellow men, even to save my own.

* * *

I have read some history. I know that it is ruling classes that make war upon one another, and not the people. In all of the history of this world the people have never yet declared a war. Not one. I do not believe that really civilized nations would murder one another. I would refuse to kill a human being on my own account. Why should I at the command of anyone else or at the command of any power on earth?

(R. 242:)

You have heard a great deal about the St. Louis platform. I wasn't at the convention when that platform was adopted, but I don't ask to be excused from my responsibility on that account. I voted for its adoption. I believe in its essential principles. There was some of its phrasing that I would have otherwise. I afterwards advocated a restatement. The testimony to the effect that I had refused to repudiate it was true.

At the time that platform was adopted the Nation had just entered upon the war and there were millions of people who were not Socialists who were opposed to the United States being precipitated into that war. Time passed; conditions changed. There were certain new developments and I believed there should be a restatement. I have been asked why I did not favor a repudiation of what was said a year before. For the reason that I

> believed then, as I believe now, that the statement correctly defined the attitude of the Socialist Party toward war. The statement, bear in mind, did not apply to the people of this country alone, but to the people of the world. It said, in effect, to the people, especially to the workers, of all countries, "Quit going to war. Stop murdering one another for the profit and glory of ruling classes. Cultivate the arts of peace. Humanize humanity. Civilize civilization." That is the essential spirit and the appeal of the much-hated, condemned St. Louis platform.

The jury brought in a verdict of guilty on the third, fourth, and seventh counts (R. 154). Motions for a new trial and arrest of judgment were overrruled and the sentence was expressly declared to run concurrently and not cumulatively (R. 155–157). The case is in this court on writ of error.

The numerous assignments of error have been concentrated by the defendant's attorneys into five points, namely:

1. The indictment fails to charge a crime.

2. The admission into evidence of the court records in the Ruthenberg, Stokes, and O'Hare cases.

3. The admission into evidence of the St. Louis platform.

4. The definition of the expressions "military forces" and "recruiting service."

5. The acts charged against the defendant are protected under the first amendment of the Constitution.

The Government will reply to these points in same manner, contending:

1. That the indictment is sufficient;

2. That the said court records were prope admitted into evidence, as bearing upon and relev to the question of the defendant's intent;

3. That the St. Louis platform was properly mitted into evidence for the same reason;

4. (*a*) That the military forces of the Uni States, within the meaning of the said clause of espionage act relating to causing or attempting cause insubordination in the military forces, properly defined by the court in his charge;

The expression "enlistment and recruiting se ice," was too narrowly, rather than too broad defined by the trial court, and consequently not prejudicial to the defendant;

5. That the first amendment of the Constitut is not essentially involved in the case, and conviction and sentence of the defendant do constitute a violation thereof.

ARGUMENT.

I.

The indictment sufficiently charges the crime

The substance of the argument of the defend under this head seems to be that the Canton spee upon which the prosecution was based, was clearly connected on the face of the indictment w the intent which constitutes an essential element the crimes charged. While this point made by defendant is not clear, it seems to involve the prop

tion that something more than the setting out of a full description of the criminal act and an unequivocal allegation of the criminal intent is necessary.

However, it is difficult to conceive what more could be set forth than is contained in this indictment, without pleading evidence. The indictment first charges the offenses in the language of the statute (R. 29, 42), namely, that the defendant did attempt to cause insubordination, etc., in the military forces and did obstruct and attempt to obstruct the recruiting and enlistment service of the United States. It fixes the date of the offense. It describes the offense, namely, the Canton speech, setting it forth in full. It describes the audience as containing men of the designated draft and military ages, giving the names of some of them. It then alleges the unlawful intents in the language of the statute, alleging that "when the defendant uttered, published, and said the aforesaid words, speech, and address to the persons aforesaid he did so willfully and with the intent on his part to cause and attempt to cause and incite and attempt to incite insubordination, disloyalty, mutiny, and refusal of duty in the military and naval forces of the United States"; and, in the fourth count, "with the intent on his part to obstruct and attempt to obstruct the recruiting and enlistment service of the United States." Nothing is left to inference. The intent is completely alleged; anything further would be pleading the evidence of intent. The defendant was apprised by the indictment of the act and intent with which he was charged.

An indictment is sufficient if the language clearly and accurately sets out all the elen necessary to constitute the offence and acquain defendant with reasonable certainty of the ac tion against him.

> *Cannon* v *United States,* 116 U. S. *United States* v *Britton,* 107 U. S. 655.

It is well settled that an indictment for a stat offense which substantially follows the langua the statute and apprises the defendant of the of charged is sufficient:

> *Commonwealth* v. *Bearse,* 108 Mass. followed in *Commonwealth* v. *Hobbs,* 140 443; *1 Wharton's Criminal Procedure,* 308 10th ed.

See also the note in 11 L. R. A. 532 on an in ment for a statutory offense.

The Circuit Court of Appeals for the Eighth cuit held in *McCarty* v. *United States,* 101 Fed. that an indictment based on a statute puni counterfeiting sufficiently charged that the acts done with a criminal intent by alleging that defendant acted "with intent to defraud." Th lowing language is quoted from the opinion:

> * * * The objections to the suffici of the indictment upon its face are few, not of a serious character. It is objected the averment that the defendant did the complained of with "intent to defraud "too general for toleration, and only amo

to pleading a conclusion." The pleader is never required in this class of cases to set out the evidence or facts going to prove the intent to defraud, or the particular means by which the party named in the indictment was to be defrauded. It is never done, and in most cases would be impractical. In the case of *U. S.* v. *Ulrici*, 3 Dill. 532, 535, Fed. Cas. No. 16, 594, this same objection was made to the indictment which charged the act was done "with intent to defraud the United States," and Mr. Justice Miller, in answering the objection, said:

"It is contended that there should be some statement of the evidence of this intent—that some one or more of the facts which manifest this intent should be set out in the indictment; but I suggested to counsel at the time that, if he could show where it was necessary to describe more than what the party intended to do, in a case where intent was the essence of the crime, then this might not be considered a sufficient charge, but I apprehend that no such instance can be produced. But it is said that you must show how he was going to do it. Now, an intent is often very hard to prove, but when you show that it is essential to a civil or crininal proceeding you can demonstrate it in a thousand ways. All human actions are the external evidence of intent. The conduct of a man, in its thousand various forms, goes to discover his inner thoughts; and to say that the indictment should allege these with particularity would be very difficult for the pleader. Are

we to set all the facts out? If not, the limit to be fixed? The objection fore, to this count are overruled, held to be good."

Dr. Wharton, in his valuable work nal Law, says:

"The means of effecting the crimin or the circumstances evincive of th with which the act was done are c to be matters of evidence to the demonstrate the intent, and not nec be incorporated in an indictme Whart. Cr. Law, sec. 292.)

Certain of the counts on which the d was convicted charged that he did complained of with intent to defraud person "and divers other persons to t jurors unknown." * * * where it sary to allege an intent to defraud s it is sufficient, when the fact is so, an intent to defraud "divers person grand jurors unknown."

In *Burton* v. *United States*, 202 U. S. 344 this court said:

It is equally true that the accused formed with reasonable certainty indictment of the nature and caus accusation against him—the two cou inbefore given at large, and upon wh tences were pronounced, being as ful of the others. The averments of th ment were sufficient to enable the d to prepare his defense, and in the

acquittal or conviction the judgment c
have been pleaded in bar of a second pros
tion for the same offense. The accused
not entitled to more, nor could he demand
all the special or particular means emplo
in the commission of the offense should be n
fully set out in the indictment. The w
of the indictment directly and without
biguity disclosed all the elements esse
to the commission of the offense charged,
therefore, within the meaning of the Const
tion and according to the rules of plead
the defendant was informed of the na
and cause of the accusation against
United States v. *Simmons*, 96 U. S. 360,
United States v. *Carll*, 105 U. S. 611; *Blit*
United States, 153 U. S. 308, 315.

In *Doe* v. *United States* the Circuit Court of App
for the Eighth Circuit, in an opinion recently rend
but not yet reported except in Bulletin No.
Department of Justice Interpretation of War Statu
passed upon and upheld the sufficiency of an ind
ment under the same clauses of the Espionage
as those involved at bar. That indictment set
the charge and intent with less particularity than
indictment at bar. The court said:

> The offense charged is purely statut
> and the words of the statute contain all
> ingredients of the offense. The count u
> consideration charges the offense in the
> guage of the statute and this is suffici
> *Potter* v. *United States*, 155 U. S. 438; *Un*

States v. *Gooding*, 12 Wheat. 460; *United States* v. *Britton*, 107 U. S. 655; *Burton* v. *United States*, 202 U. S. 344.

Wharton's Criminal Law, section 292; *Evans* v. *United States*, 153 U. S. 584; *May* v. *United States*, 199 Fed. 42.

We think the count in question clearly apprised the defendant of what he must be prepared to meet and showed with accuracy to what extent he might plead a former acquittal or conviction. *Cochan* v. *United States*, 157 U. S. 286.

II.

Records of cases referred to in defendant's address properly admitted on issue of intent.

The defendant assigns as error the admission into evidence of so much of the records of the Ruthenberg, Wagenknecht, Baker, O'Hare, and Stokes cases as show the nature of the offenses with which those persons were charged and convicted. The defendant claims that there was no proof of defendant's knowledge of the facts of those cases. This is a frivolous claim. The references to these cases in defendant's speech show that he knew all about them and any assumption to the contrary would be contrary to every reasonable inference.

The main contention of the defendant regarding these records is that their admissibility depends upon some proof that the audience would understand his references to these cases. This evidence, however, was not admitted upon any theory that it related to

the question of the effect of the speech upon the audience, but by reason of its relevancy to the question of the defendant's intent. Did he intend, when he made the speech, to cause insubordination, etc., in the military forces of the United States or obstruct its recruiting and enlistment service, that is, was it all or a part of his intent that he influence the men of military age against enlistment and faithful military service? That was an issue before the jury. He referred to these Ruthenberg et al., O'Hare, and Stokes cases at some length, coming back to them with frequency during the address. His was not an expression of regret that these men and women had violated the laws provided for the protection of the Army, but an expression of pride in their acts and of glorification in their violations of law. He held them up as models to be followed by his audience and expressly identified his own purposes and point of view with the acts of these other persons for which they had been convicted. Under these circumstances, the nature of the acts of these men and women, the fact that they had been convicted of inducing violations of the Selective Service Act, or of attempting to cause insubordination in the military forces of the United States or of obstructing the recruiting and enlistment service bore obviously on the defendant's purpose in his speech, and tended to show that he had the same unlawful purpose as those whom he praised so highly and asked others to emulate.

The trial court, in its charge to the jury, carefully limited the application of this evidence to the question of intent, saying (R. 277–278):

> Certain testimony was permitted to go to you as to statements made by the defendant at other times than the occasion charged in in the indictment. More particularly I refer to the testimony of Clyde R. Miller, and the witness from Chicago by the name of Triner. This testimony, I then warned you, and I wish to repeat, was permitted to go to you and is to be weighed by you only in enabling you to find the intent with which the words and language was uttered as charged in the indictment. He is not on trial and is not to be tried for any other offense than that charged in the indictment, namely, that said to have been committed by certain public utterances and language used on the 16th day of June, 1918, at the band stand in Nimisila Park. Language or utterances made by him at any other time or place is not to be weighed by you for the purpose of enabling you to find that he uttered this language charged, or that he committed the offense charged at that time and place; but only if you shall find from the evidence relating thereto beyond a reasonable doubt that he uttered the language, or the substance of it, as charged, at that time and place, and that the natural or reasonably probable tendency and effect thereof would be to produce the results forbidden by the provisions of the law, then, in that event, being required to

pass to a consideration of the specific intent with which he made the utterances, you may, for that purpose alone, weigh and consider the testimony permitted to go to you as to what he said at some other times or places.

I also permitted to be read in evidence the so-called antiwar platform or program of the Socialist Party, and the record and conviction of Ruthenberg, Wagenknecht, and Baker, and of Rose Pastor Stokes, and of Kate Richards O'Hare. This evidence also is to be received and weighed by you under the same limitations and for the same purpose only as I have already stated that I permitted the testimony of Miller and Triner to go to you, and it is to be so weighed and considered.

Particularly do I warn you to bear in mind that the defendant here is not on trial for having uttered any of the words charged to have been uttered by Mrs. O'Hare or by Mrs. Stokes, or for that which is contained in the antiwar program or pronunciamento of the Socialist Party. He is on trial here for what he did in Canton on the 16th day of June, 1918, and these other scraps of evidence are merely to be received and weighed by you for the purpose of enabling you to find what was the intent and state of his mind and purpose with which he made and uttered the remarks or address upon that occasion.

The cases cited by the defendant in this subdivision of his brief all relate to the question of the admissibility, in a prosecution for one crime, of evidence of other crimes committed by a defendant; a question not involved in the case at bar.

III.

St. Louis platform clearly admissible in evidence on question of intent.

The St. Louis platform represented the decision of the governing board of the National Socialist Party to oppose the war to the bitter end or any participation of its members in war service. On a referendum vote of the members of the party the defendant had voted in favor of this platform. Both before and after his Canton speech he expressed approval of the spirit and substance of that platform and he opposed the repudiating of that platform when the question of that repudiation was under discussion at a conference of State secretaries of the party. The basic principle and appeal set forth in that platform completely corresponded to the basic theme and appeal of the defendant's speech, namely, the capitalist class is the real enemy of the working class; the war is for the benefit of the capitalist class; the duty of a member of the working class is to stick by his class and resist participation in the war. The St. Louis platform and defendant's approval of it were obviously relevant to the question of whether, when he made his speech at Canton, the defendant had an intent to influence his hearers against loyal military service. When a man makes a public address to workingmen, which is of a nature to discourage military service, the fact of his approval of a platform of his party calling upon all workingmen to refuse and resist war service, has an obvious relevancy to the

question whether he had the purpose of influencing his audience against loyal and faithful military service.

As seen in the passage above quoted from the court's charge, the jury was carefully warned that this evidence was to be considered only upon the issue of the defendant's intent, and, at the time of the introduction of the St. Louis platform and the defendant's utterances concerning it, the court stated to the jury (R. 169–170):

> Statements made by Mr. Debs other than the specific statements charged against him in the indictment as an offense will be received by you, gentlemen of the jury, for the purpose of determining whether or not he did make or utter the words charged against him in the indictment. An element of the offense charged in the indictment, however, is the specific intent with which the words and utterances were made and acts done as charged in the indictment. Now, this testimony which is now being offered as to statements made by Mr. Debs other than those specified in the indictment is to be received, and will be received and weighed only for the purpose of enabling you to find and determine the intent with which the words and utterances were made as charged in the indictment, in the event you should ultimately find that he did make and utter the words charged in the indictment.

The evidence falls within the recognized principle that where the issue of intent is involved, and intent

must be shown as an element of the offense, evidence may be admitted of other acts or utterances of the defendant's bearing on his attitude of mind or the subject matter of the acts or utterances with which he is charged.

It is, for instance, well settled that in cases where the intent to deceive or defraud is an essential element of the offense other fraudulent acts of the defendant may be shown.

See *Bottomley* v. *U. S.*, 1 Story, 135, where the court held that where a party is charged with fraud in a particular transaction evidence may be offered of similar previous fraudulent transactions between him and third persons; and wherever the intent or guilty knowledge of a party is material to the issue of the case, collateral facts tending to establish such intent or knowledge, are proper evidence. Judge Story in this case at pages 142–145, in an oft-quoted statement says:

> The objection taken to all these three last portions of the evidence excepted to, is, that it is res inter alios acta, and upon other occasions; and therefore, not properly admissible to establish a fraud in the case of the importation of the goods now before the court. But it appears to me clearly admissible upon the general doctrine of evidence in cases of conspiracy and fraud, where other acts in furtherance of the same general fraudulent design is admissible; first, to establish the fact, that there is such a conspiracy and fraud; and, secondly, to repel the suggestion

that the acts might be fairly attributed to accident, mistake, or innocent rashness, or negligence. In most cases of conspiracy and fraud, the question of intent, or purpose or design in the act done, whether innocent or illegal, whether honest or fraudulent, rarely admits of direct and positive proof; but it is to be deduced from various circumstances of more or less stringency, and often occurring, not merely between the same parties, but between the party charged with the conspiracy or fraud and third persons. And in all cases where the guilt of the party depends upon the intent, purpose, or design, with which the act is done, or upon his guilty knowledge thereof, I understand it to be a general rule, that collateral facts may be examined into, in which he bore a part, for the purpose of establishing such guilty intent, design, purpose, or knowledge. Thus, in a prosecution for uttering a bank note, or a bill of exchange, or promissory note, with knowledge of its being forged, proof, that the prisoner had uttered other forged notes or bills, whether of the same or of a different kind, or that he had other forged notes or bills in his possession, is clearly admissible as showing, that he knew the note or bill in question to be forged. So the law is laid down in Mr. Phillips and Mr. Amos's excellent Treatise on Evidence, in the last edition. The same doctrine is applied in the same work to a prosecution for uttering counterfeit money, where the fact of having in his possession other counterfeit money, or having

> uttered other counterfeit money, is pr
> proof against the prisoner to show his gu
> knowledge. I have looked into the autl
> ties; and they fully support the staten
> of the learned writers.

After citing certain leading cases, Judge S concludes:

> In short, wherever the intent or gu
> knowledge of a party is a material ingred
> in the issue of a case, these collateral fa
> tending to establish such intent or knowle
> are proper evidence. In many cases of fr
> it would be otherwise impossible satisfacto
> to establish the true nature and characte
> the act.
>
> *1 Greenleaf on Evidence*, 15th Ed. 88.

Among the decisions of this court recogni this principle in cases involving fradulent int are:

> *Castle* v. *Bullard*, 64 U. S. 172.
> *Butler* v. *Watkins*, 80 U. S. 456.
> *N. Y. Mutual Life Ins. Co.* v. *Armstr*
> 117 U. S. 591.
> *U. S.* v. *Wood*, 41 U. S. 341.
> *Buckley* v. *U. S.*, 45 U. S. 250.
> *Allis* v. *U. S.*, 155 U. S. 117.
> *Schultz* v. *U. S.*, 200 ~~U. S.~~ Fed. 234.

More nearly related to the instant case are those thorities which hold that, on the question of malic actions for libel, evidence of other utterances the defendant, tending to show his attitude tow the person libelled, is admissible.

In *Eldridge* v. *State*, 27 Florida 162, the Court at page 450 says:

> To the introduction of this article in evidence defendant objected on the ground that it was printed after the finding of the indictment, and because the same is not libelous, and does not refer to the same subject matter as the article set forth in the indictment, and because the same is irrelevant and immaterial. This objection was overruled and the said article was read to the jury. Permitting this article to be read to the jury is the first error assigned. The authorities referred to by counsel for defendant do not, in our opinion, sustain the objection here made. This is a criminal prosecution for maliciously publishing a libel. The rule announced in the case of *Com.* v. *Damon*, 136 Mass. 441, we think, is correct. The conclusion of the court in that case on this point is stated in the following language:
>
> "We think that in criminal prosecutions for libel the reasonable doctrine is that some connection must be shown between the publication complained of and the publications admitted in evidence to prove actual malice; but if these tend to show ill will towards the person concerning whom the publication complained of is made, and are of such a nature as to indicate a persistent disposition of hatred or ill will towards him, or if they appear to be a part of a settled purpose to bring him into public hatred, contempt, or ridicule, and are sufficiently near in time to

afford a natural inference that the same
of mind existed when the publication
plained of was made, they are admis
although they are subsequent to the p
cation complained of, and do not expr
refer to it."

The article here objected to was publ
seven days after the publication of the al
libelous article, and the former refe
direct terms to the same subject matte
persons mentioned in the latter. We t
these publications are so related to each
in time and subject matter as to mal
proper to admit the second in evidenc
the question of malice, and the court
mitted no error in this respect. W
Crim. Ev., sec. 52; 3 Greenl. Ev., sec.
Williams v. *Miner*, 18 Conn. 464; *Sta*
Riggs, 39 Conn. 498; *Kennedy* v. *Giffor*
Wend. 296; *Robbins* v. *Fletcher*, 101 M
115; *Com* v. *Damon*, 136 Mass. 441.

1 Wharton Criminal Evidence, 10th Ed.
State v. *Riggs*, 39 Conn. 398, 503.

Still more closely related to the present case
those involving seditious libels and seditious ac
ties, and the decisions in those cases upholding
admissibility of other acts or utterances of the
fendant's therein completely dispose of the con
tions of the defendant at bar.

In *Bottomley* v. *U. S.*, 1 Story 135, cited su
while discussing the leading authorities for
principle which the court was then upholding, c

Rex v. *Hunt*, 3 Barn. & Ald., 566 as the authority for the proposition:

> So, in an indictment for a conspiracy to create public discontent and disaffection, proof is admissible against the prisoner, that at another meeting held for an object professedly similar, and of which the prisoner was chairman, resolutions were passed of a character to create such discontent and disaffection.

This case of *Rex* v. *Hunt* holds that "upon an indictment against X and other for unlawfully meeting together for seditious purposes, X having presided at this meeting, resolutions passed at a former meeting assembled a short time before in a distant place and at which X had also presided and the avowed object of which meeting was that of the meeting mentioned in the indictment, were admissible in evidence to show the intents of X in assembling and attending the meeting in question." The court at page 572–573 says:

> The second point of objection is, to the admission of the resolutions of the *Smithfield* meeting. The objection here is twofold: First that the best evidence was not produced; and secondly, that no evidence of them was admissible. Now the paper produced was proved to have been received from the hands of one of the present defendants at the time and place of passing the resolutions, as containing the very resolutions then actually in progress, and then in the act of being passed

by or proposed to the persons ass
and as against the party to whom th
applied, the paper produced was as
not better evidence than any other cou
been. On the second part of the ob
it is to be observed, that these resolutio
proposed at a large assembly, very r
held for some alleged purpose of parlian
reform, which was the avowed purpose
meeting at *Manchester*, at which p
assembly, one of the defendants had pr
and put the question (if, indeed, any q
can be deemed to be effectively propo
on such an occasion) which defend
stranger in point of residence or othe
political connection with *Manchester*
vicinity, was announced as the invited
man, and actually became the chairm
the meeting in question. Under suc
stances, upon the question of intent
have no doubt that it was competen
show, as against that individual, that
similar meeting, held for an object profe
similar, such matters had passed unde
immediate auspices. I have no doubt
competency of such evidence; its effec
for the consideration of the jury, and
properly left to them. It was in its n
a declaration, by that defendant, of hi
sentiments and views, with reference to
is called parliamentary reform, and t
assembling of large numbers of perso
hear speeches and resolutions under
pretext.

1 Wharton Criminal Evidence, 10th Ed., p

The whole subject of the admissibility of other acts or utterances of the defendant on the question of the intent with which he committed the act or utterance with which he is charged in the case on trial, is ably discussed in—

> *1 Wigmore on Evidence*, 304, 390–391, 414–415, 490–492.

On page 304 this learned author says, by way of general introduction:

> Of the three modes of evidencing a state of mind, * * * (1) Conduct or behavior (including language not used assertively) illustrates and points back to the state of mind producing it; and the state of mind which is variously termed knowledge, belief, or consciousness shows itself in the conduct of its bearer. (2) External circumstances, calculated by their presence or occurrence to bring about the state of mind in question, are also available to show the probability that consciousness, knowledge, or belief, subsequently ensued. (3) A prior or a subsequent state of mind indicates, within certain limits, its existence at the time in question.

He then proceeds to discuss the admissibility of various types of acts, declarations, or facts bearing upon knowledge, belief, consciousness, or intent, as indicative of the state of mind of the defendant and the various classes of cases in which similar acts of the defendant are admissible in evidence to prove

intent. On page 490-492, discussing the proof of malice in defamation cases, the author proceeds:

> The probative value of other utterances as showing malice at the time charged rests on a double argument; (*a*) that the other utterance indicates malice at that time of utterance; and (*b*) that malice then indicates malice at the time charged.
>
> (*a*) That the other utterance may indicate malice at that time is clear, on the general principle that all conduct, including language, is one of the legitimate sources of inference to the feeling that inspires it.
>
> (*b*) The second branch of the inference, that malice *then* indicates malice *at the time charged*, is merely another and legitimate application of the general principle, already dealt with. There can be and is no question as to the propriety of the argument. * * *
>
> (1) The *length of time* elapsing between the evidential utterance and that charged may of course affect the strength of the inference. The English courts treat the lapse of time as never affecting the admissibility of the utterances; but in this country a few courts have sought to put some rational limitation to it. The matter ought to be left entirely in the hands of the trial court.
>
> (2) That the evidential utterances occurred *subsequent* to that charged, and, in particular, after action or trial begun, is equally immaterial, from the point of view of probative value; but a limitation is here suggested by the ensuing considerations of the auxiliary policy.

> Thus the limitations that result from the point of view of relevancy are merely: That (perhaps) an unproved and unwithdrawn plea of truth is not receivable; that (in this country) the subject of the other utterances must be the same; and that (in this country, perhaps) the evidential utterance must not be too remote in time.

As for the old Circuit Court case of *United States* v. *Crandall*, cited on page 58 of the defendant's brief, and the only citation in favor of his contentions, there appears to be some uncertainty concerning the decision of the court, for in *6 Fed. Cas.* as case No. 3350 appears the following:

> CRANDELL'S TRIAL.
>
> CRIMINAL LIBEL—EVIDENCE.
>
> On an indictment for a seditious libel, in order to show the defendant's intent the prosecution may give in evidence any libellous papers subsequently published by the defendant or found, unpublished, in his possession.
>
> (See *U. S.* v. *Crandell*, case No. 14885.)
>
> (Nowhere reported; opinion not now accessible. The above statement of the point determined was taken from Brightley's Dig. 232.)

With the reported cases in both this country and England holding with Crandall's case as that case is described in 6 Fed. Cas. and against Crandall's case as described in 25 Fed. Cas., that unreported and very uncertain case could hardly be considered as strong authority for the defendant. Even if it held

as claimed in defendant's brief, it would not support his contentions, for the St. Louis platform was adopted previous to the passage of the Selective-Service and Espionage Acts and the defendant did not, so far as appears, write or publish it.

IV.

The trial court's definitions of "military forces" and "enlistment and recruiting service" were too narrow, rather than too broad, and therefore not prejudicial to the defendant.

(a) "MILITARY FORCES."—The defendant complains of the meaning which the trial court gave in its rulings and instructions to the expression "military forces of the United States." The court's definition of that phrase is embodied in the following passage from the charge to the jury (R. 268):

> The military forces of the United States as defined in this provision of the act and of the law, I say to you, are not limited to those actually enlisted and enrolled in the active, organized military forces. The act of May 18, 1917, providing for the creation of an active army for the purpose of carrying on this war required that all male persons between the ages of twenty-one and thirty, both inclusive, to enroll or register for military service, and it is from the men thus registered, excluding aliens who had not declared an intention to become citizens, that contingents of men are, from time to time, called into the active military forces of the United States. For the purposes of this act, and of this offense, I say to you that all such persons thus registered and enrolled, and thus subject from time to

> time to be called into the active service, are a part of the military forces of the United States, and a causing or attempting to cause, or inciting or attempting to incite disloyalty, insubordination, mutiny, or refusal of duty among them, or any of them, will be sufficient to constitute the crime charged under this count of the indictment.

The history of the statutes in the United States relating to military service, beginning with the statute of 1792 and going down through the Selective Service Act itself, shows that in the evolution of the Federal military policy, male citizens and declarant aliens of the ages designated in the statutes (eighteen to forty-five) came to be treated as constituting the national or military forces of the United States, subject to call into active duty whenever the emergency might require, and in the Espionage Act, the expression "military forces of the United States" was intended to have that significance. Furthermore, while the principle of strict construction of penal statutes applies here as elsewhere, in questions of statutory interpretation, it is the intention of Congress which is always the object of the inquiry; and, in considering the meaning of any part of the Espionage Act, the tremendous emergency for which Congress was legislating should be kept in mind. That act was pending contemporaneously with the Selective Service Act itself, and it was passed a few weeks after Congress had determined upon the raising of great new armies under that act. The evident design of

this section 3 of the Espionage Act was to protec from deliberate obstruction and interference th whole process of raising these great armies. In viev of this statutory history and situation, it may b fairly determined, that in the use of the expressio "military forces of the United States," Congres intended to cover the whole body of persons consti tuting the national forces, including those in activ service, those in any state of the process of inductio into service, and those in reserve. This expressio has come for construction before practically ever district court in the United States, and with bu three or four exceptions, they have given it th broader rather than the excessively narrow interpre tation for which the defendant contends.

HISTORICAL REVIEW OF STATUTES RELATING TO MILI-TARY FORCES AND SERVICE.

The statutory history of our military policy has recently been discussed in considerable detail on pages 16–27 of the Government's brief in the case of *Abraham L. Sugarman, plaintiff in error,* v. *United States of America,* No. 345 of this court, and the court is hereby respectfully referred to the said discussion, as well as to the résumé of this history contained in the *Selective Draft Law cases,* 245 U. S. 366, 384. We will here content ourselves with a summary of that discussion and the conclusions to be drawn therefrom.

From the beginning of that history, represented by "An act more effectively to provide for the national

defense by establishing an uniform militia throughout the United States" (act of May 8, 1792, c. 33, 1 Stat. 271), down to the Civil War Act of March 3, 1863, the military forces of the Nation consisted of the mixed State and Federal militia system and volunteers; the said Civil War statute being the first national draft law. Amongst the decisions interpreting the early militia statutes is *Tyler* v. *Pomeroy*, 8 Allen (Mass.), 480, 493, where the court said:

> Under this power to organize (the militia) Congress has the exclusive power of determining who shall constitute the militia, and all persons coming within the class defined by Congress are members of the militia *without any act of their own.*

This is an early recognition of the principle that a man becomes a member of the military forces by virtue of the statute itself and may be treated as a deserter subject to court-martial, though he fails to report for service and fails to take any steps himself toward induction into service.

See also, to the same effect:

Opinion of Justices, 14 Gray, 614.
McCall's Case, Federal Cases, No. 8669.
Kneedler v. *Lane*, 45 Pa. St., 238.
Houston v. *Moore*, 5 Wheaton, 1.
Martin v. *Mott*, 12 Wheaton, 19.

This principle has received uninterrupted judicial sanction, including cases arising under the Selective Service Act itself.

The Civil War draft law (act of Mar. 3, 1863, c. 75 12 Stat., 731) provided in the first section thereof:

> That all able-bodied male citizens of the United States and persons of foreign birth who shall have declared on oath their intention to become citizens under and in pursuance of the laws thereof, between the ages of twenty and forty-five years,—are hereby declared to constitute the *national forces* and shall be *liable* to perform military duty in the *service* of the United States when called out by the President for that purpose.

Section 3 provided:

> The *national forces of the United States* not now in the military service, enrolled under that act, shall be divided into two classes, the first of which shall comprise all persons subject to do military duty between the ages of 20 and 35 years, and all unmarried persons subject to military duty above the age of 35 and under the age of 45; the second class shall comprise all other persons subject to do military duty, and they shall not, in any district, be called into the *service* of the United States until those of the first class shall have been called.

Section 13 provides:

> And any person failing to report after due service of notice (to report for duty) * * * shall be deemed a deserter * * * and sent to the nearest military post for trial by court martial.

This statute is significant. It marked a radical change in the Federal military policy. The first matter of note in its language is that it converts into the military forces not, as in the case of the old militia statutes, the "citizens of the States," but the "citizens of the United States" of the designated classes and ages. It also includes declarant aliens. It further makes a clear distinction between "forces" and "service." All citizens and declarant aliens of the designated classes and ages are declared to constitute the "national forces," which are then divided into two subdivisions, those in the service and those not yet inducted. This creation of a "national force," consisting of male citizens of the United States and declarant aliens of certain ages, from which drafts into the Federal service may be made from time to time as the emergency may require and the President or Congress may direct, has been continued and recognized ever since this statute of 1863 down to the present, including the Selective Service Act and its supplements.

The act of March 3, 1863, like the later Selective Service Act, provided a draft process beginning with registration of all persons of draft ages, said registration being, in the earlier statute, called "enrollment." In *United States* v. *Scott*, 70 U. S. 642, in which the scope of "enrollment" in that statute was in question, this court, speaking through Mr. Justice Miller, said at page 646:

> It is to be observed, however, that this construction of the word enrollment must depend

entirely upon the statute for its support, there is nothing in the derivation of the wo or in its ordinary use, which would just such a meaning. It may be defined to be act of inserting in a list or roll; and in re ence to the purpose of calling the able-bod men of the country into its service, its us meaning is fully satisfied when the names the persons liable to such service are pla on a roll or register. We accordingly find t the first duty imposed by the act on t board of enrollment is to ascertain who th persons are, and place their names on a re ter. This catalogue is properly called the r and the completion of it, the enrollment the *military force* of the country.

The next general military statute was passed the Spanish-American War, being the act of April 1898 (30 Stat. at Large 361), the first section p viding:

> All able-bodied male citizens of the Uni States and persons of foreign birth who sh have declared their intention to become c zens of the United States * * * betwe the ages of 18 and 45, are *hereby declared constitute the national* forces and, with su exceptions and under such conditions as m be prescribed by law, shall be liable to p form military *duty* in the *service* of the Uni States.

The only change made by this statute was t extension of the age limits to include all over It maintains the creation of "national forces" a the distinction between "forces" and "servic

This statute has never been repealed. It is still the law and makes every citizen of the United States and declarant alien of the designated ages and classes a member of the "national forces of the United States."

On June 3, 1916, in the face of an impending emergency which might require a largely increased and reorganized Army, Congress passed the National Defense Act (39 Stat., c. 134, 197). This statute provided for an enlarged and reorganized Army consisting of the Regular Army and militia, and section 57 provides for a "Militia of the United States" which shall include the National Guard, the Naval Militia, and the *Unorganized Militia*.

The statute then proceeds to deal with the organization of the National Guard and National Guard Reserve, obviously constituting the successors of the old State Militia, under a mixed State and Federal control. It is to be noted, however, that it provides for the draft of the individual members of the National Guard into the Federal forces, and section 57 itself speaks of the "Militia of the United States." The statute contains no further reference to the Unorganized Militia, which remains, therefore, obviously in the light of the statute of 1863 and the unrepealed statute of 1898, simply that portion of the "national forces" which has not been inducted into the organized Regular Army or National Guard.

The court's attention is also particularly called to the use of the expression "armed land forces" in section one hundred and eleven of the National Defense

Act, which provides for Federal draft of the Na
Guard "when Congress shall have authorized t
of the *armed* land *forces* of the United States f
purpose requiring the use of troops in excess o
of the Regular Army;" showing a distinction
mind of Congress between that portion of the n
forces which has been armed and is in servi
that which is in reserve but subject to call.

The Selective Service Act (act of May 18,
40 Stat. 76), makes no change in this situatio
provides for bringing the Regular Army and Na
Guard up to their maximum strength, for
volunteer bodies, and for the drafting into n
tional armies of that portion of the remainder
national forces falling between the ages of 21 a
Later in the war, provision was made for the d
of the rest of the national forces falling betwe
ages of 18 and 45.

It is to be noted in this connection, that the p
of selecting men for active service provided
Selective Service Act is a process of exclusion a
of inclusion. All of the designated classes an
are liable to active service unless exempt
provided in the statute. Taken in connectio
the unrepealed act of 1898 and the National D
Act, the draft sections of the Selective Servic
simply provide the call into service of a portion
existing "national forces."

In fact the draft process as provided by the
tive Service Regulations is one of classifi
rather than exemption; the registrant not se

for immediate active service being retained on the classified lists subject to later call by the draft authorities for such service as the exigencies of the situation might require. A striking instance of this aspect of the draft process is the so-called "work or fight" order, being the regulation promulgated by the President on May 23, 1918 (Selective Service Regulations, sections 121–A to 121–L and 318–322), by virtue of which all men of draft age who, after a designated date, continue in what are defined as nonproductive occupations or employments are ordered inducted into active military service.

The decisions under the Selective Service Act, as under the draft acts of 1863 and 1898, clearly uphold the jurisdiction of courts-martial to try and punish as deserters men who fail to respond for service when called into service by the draft boards. The Selective Service Regulations promulgated by the President in pursuance of the Selective Service Act provide that, without any act of enrollment or other action on his part, a registrant who fails to respond to certain orders of his draft board automatically becomes a deserter subject to court martial (Selective Service Regulations, sec. 140). In other words, these regulations place the registrant in a military status subject to court-martial without any act of his own; and this has been upheld by the courts. The question was fully discussed in *Franke* v. *Murray*, 248 Fed. 865, a decision of the Circuit Court of Appeals, Eighth Circuit, the court deciding squarely against the contention of a registrant, who had failed to

respond to the call for service, that as he had not entered the military service he must be treated as a civilian and not subject to the military tribunal.

The history and development of the Federal statutes upon compulsory military service clearly demonstrate, therefore, that the "national forces" include the whole body of able-bodied males, both citizens and declarant aliens, of the ages of 18 to 45 years. The Selective Service Act designated the portion of these forces between the ages of 21 and 31 as immediately subject to the call into service. Section 3, Title I, of the Espionage Act, passed at about the same time, was designed to protect the process calling them into the service. A distinction in this regard between "military forces" and "national forces" would be untenable. Our national forces in the sense of all those who contribute to the national strength, financial and industrial as well as military, could not be limited to persons under 45; so where national forces are referred to as the males of certain limited ages, especially in statutes dealing exclusively with the subject of armies, "national forces" and "military forces of the United States" may be considered synonymous expressions.

Interpretation contended for by defendant would render a portion of the section superfluous and without effect.

This interpretation also finds support in the provisions of the clause of the Espionage Act itself involved in this case. This clause provides for the punish-

ment of persons who "cause insubordination, disloyalty, mutiny, or refusal of duty in the military forces of the United States." Insubordination, disloyalty, mutiny, or refusal of duty on the part of a soldier in the service is and, of course, always has been a violation of the Articles of War. Article 22 prohibits mutiny or sedition. Article 47 prohibits desertion and provides for the punishment thereof. Article 62 covers all crimes not capital and all disorders and neglects which officers and soldiers may be guilty of to the prejudice of good order and military discipline, though not mentioned in other articles. Consequently section 332 of the Penal Code provided for the punishment of any person guilty of causing one in the military service to commit any such offense. Therefore no statute was needed at the time of the passage of the Espionage Act to reach those who caused insubordination, etc., on the part of men in military service. On the principle, therefore, that no portion of a statute should be given an interpretation which would render it an absolutely superfluous and unnecessary piece of legislation, some significance and effect should, if possible, be sought in the language used by Congress. The clause is a blanket clause, intended to cover all attempts, successful or unsuccessful, to cause unlawful disobedience to the constituted authorities on the part of men either already in the military service or subject to call into that service.

DECISIONS OF THE COURTS.

As above stated, the question has been passed upon by almost all district courts and with an overwhelming preponderance in favor of the decisions of the trial court in this case. Two of these decisions are reported, namely, *U. S.* v. *Hall*, 248 Fed. 150, which supports the defendant and *U. S.* v. *Boutin*, 251 Fed. 313, which supports the Government. Most of these decisions being contained in the charges to the jury have not found their way into the Federal Reporter. The Department of Justice has printed in a series entitled "Interpretation of War Statutes" a number of bulletins containing decisions of the courts on the war statutes. Many of these were cited in the Government's brief in the Sugarman case, No. 345 of this court, to which reference is hereby made.

A typical expression of the larger reasons for the more broad interpretation is the following quotation from the charge to the jury in *United States* v. *Huhn* in the District Court of Wyoming, Bulletin No. 58:

> Considering the broad purposes of the Selective Draft Act, and considering the evils that were intended to be met by the statute under which this indictment was drawn, you are instructed that the words "military forces" as therein used are to be given a broad, rather than a narrow meaning, and held to mean not merely the men in active military service, but also the men who had registered as required by law.

The following quotation from the charge to the jury in *U. S.* v. *Stokes*, Bulletin 106, illustrates the reasons in support of the prevailing and, as we contend, the correct view:

> Discussing then the nature of the publication and its adaptability to the accomplishment of the purpose charged, it is proper first to define to you what is meant by the military or naval forces of the United States. In the first place, they include all in active service, either in training at military or naval camps or within the body of the Army and Navy in actual service after the period of training has been completed. In the next place, by act of Congress, still in force, all able-bodied male citizens of the United States, and persons of foreign birth who shall have declared their intention to become citizens of the United States, under and in pursuance of the laws thereof, between the ages of 18 and 45 years, are declared to constitute the national forces, and, with such exceptions and under such conditions as may be provided by law, shall be liable to perform military duty in the service of the United States. Third, by the Selective Service Act of May 18, 1917, the President was authorized to increase temporarily and for the purposes of this war the Military Establishment of the United States. All male persons between the ages of 21 and 30, inclusive, were required to register on the 5th day of June, 1917. They did so to the number approximately of ten millions. All were given a serial number, and subsequently

> thereto and from time to time have been, are being, and will be drawn and placed in active service according to their classes and physical ability and as necessity may arise. All such male persons so registered and having received their serial number subjecting them to call are a part of the military and naval forces of the United States. It will thus be seen that such military and naval forces consist of those already at the front, in training camps preparatory thereof, and among the body of the people subject to call and enlistment for military and naval service.

A similar charge to the jury, though perhaps not applicable to the facts of the case, was upheld by the Circuit Court of Appeals, Third Circuit, in *United States* v. *Krafft*, 249 Fed. 919.

The defendant was found guilty of attempting to cause insubordination, etc., in the military forces. Let us assume, for a moment, that the phrase refers exclusively to men in active service. Some of Debs's audience were likely to be in active service at an early date. The defendant was trying to induce them to be disloyal and insubordinate when their turn for faithful military service might come. As said by the Circuit Court of Appeals for the Third Circuit in *U. S.* v. *Krafft*, 249 Fed. 919 at 924:

> Both "willfully causing" and "willfully attempting to cause" are by the statute made alike criminal; and, such being the case, the attempt to cause being forbidden, as well as the causing, there is no ground to construe or apply this statute on theory that insubordination, mutiny, or disloyalty must be effected.

> To so hold would be to defeat the whole purpose of the statute. For the purpose of the statute as a whole was not to wait and see if the seed of insubordination—in this case sown in August in Newark—a later date in some camps sprang into life and brought forth fruit, but it was to prevent the seed from being sown initially. Moreover, it is clear that this new statute was to enable the civil courts to prevent the sowing of the seeds of disloyalty, for with the fruits of disloyalty, to which a misguided soldier might be led by the disloyal advice, the military court-martial already provided was sufficient. The statute was not addressed to the misguided man who was in the service, but was manifestly to include any one—for "whoever" is a broad inclusive word—who in any way willfully created or attempted to cause insubordination. Clearly the court below was right in holding that if in fact the defendant used the language alleged, and if his purpose was willful to cause insubordination, then the statute was violated. Clearly it was right in holding that, to constitute the crime at the start, it was not necessary for that willful purpose to succeed.

(b) "RECRUITING AND ENLISTMENT SERVICE."—The trial court's conception of the meaning of the phrase "recruiting and enlistment service" is contained in the following portion of its charge to the jury (R. 270):

> * * * The recruiting or enlistment service of the United States is designed to enroll in the Army or Navy persons only who come

forward voluntarily to enlist and to en
themselves. To be sure, arguments, indu
ments, and persuasions may be and usually
resorted to to effect that result; but whet
or not anyone enrolls or enlists, or, in ot
words, volunteers for this service, depe
upon the state of the mind of the individu
All male persons between the ages of eight
and forty-five, both inclusive, who are citiz
of the United States, or who have decla
their intentions to become citizens of t
United States, and are not subjects of the
tions with which we are at war, are and w
then eligible for enrollment in the enlistm
or recruiting service.

In weighing and scrutinizing the eviden
therefore, both in finding whether or not the e
dence shows beyond a reasonable doubt th
the defendant wilfully obstructed or attempt
to obstruct the recruiting or enlistment servi
and in also finding from the evidence wheth
or not he had a specific criminal intent, eith
to obstruct or attempt to obstruct, it is prop
that you should bear in mind this ment
attitute toward the military or naval servi
of the individuals of that class of our popul
tion from which persons must be recruited
enlisted. And it is also proper for you to be
in mind how this attitude or disposition
mind of such individuals is or may be affecte
by the attitude of their friends, companion
and relatives. And it is also important, i
passing upon this, that you should bear i
mind the natural and reasonably probabl
effect of such public words or utterances a

you may find the defendant to have used, upon this attitude of mind on the part of the persons from whom recruits are obtained.

The defendant did not except to that portion of the charge and his complaint relates rather to the basic merits of the case under the fourth count than to any particular ruling of the court. He seems to argue that, to fall within the statute, the obstruction of the recruiting and enlistment service must be directed upon or against an officer engaged in this recruiting or enlistment service. Plainly, however, the obstruction can operate, and more effectively operate, upon the military eligible himself, who is the object of the activities of the recruiting and enlistment service. If, for instance, a defendant knowing that a certain young man of military age is about to attend a recruiting meeting and fearing that this young man might be influenced to enlist, deliberately, for the purpose of preventing this enlistment, locks the young man in a room, no one certainly would claim that this was not an obstruction of the recruiting service even though the defendant did not touch or approach a recruiting officer. Similarly, an attempt to keep the same young man from enlistment by influence rather than violence would have the same purpose and evil effect. The enlistment of young men of military age in the Army being the object of the activities of the recruiting and enlistment service, obstruction of that service can be as effectively, indeed more effectively, pro-

duced by actions or utterances directed at the
tary eligible than at the recruiting officer.

The Government contends that the court gav
narrow an interpretation of the phrase under
cussion, and that the significance of "recruiting
enlistment service," as intended in the Espio
Act, is the whole process of raising an army, bot
volunteer enrollment and by draft. "Enlistm
is practically synonymous with "enrollment,"
the enlisted men are all those whose names are
the rolls of the Army, whether their original in
tion was by virtue of volunteering or draft.

The New Standard English Dictionary gives
following definition of "recruiting":

> Enlisting men for military or naval se
> in; supply with recruits; as, to recruit
> army. To gain or raise new supplies of
> thing lacking or needed, especially of
> soldiers for an army.

Black's Law Dictionary under "enlistment" say

> The words "enlist" and "enlistment,"
> law as in common usage may signify either
> complete fact of entering into the mili
> service or the first step taken by the rec
> towards that end. When used in the for
> sense as in statutes conferring a right o
> pelling the military service of enlisted m
> the enlistment is not deemed comple
> until the man has been mustered into
> service.
>
> Enlisted applies to a drafted man as wel
> a volunteer, whose name is duly entered
> the military rolls.

Similarly Bouvier's Law Dictionary:

> The act of making a contract to serve the Government in a subordinate capacity, either in the Army or Navy. The contract so made is also called an enlistment. A drafted man is said to be "enlisted" as well as a volunteer, but the term does not apply to one entering the Army under a commission.

The Selective Service law itself (act of May 18, 1917, c. 15, 40 Stat. 76), as well as other recent war statutes, show the meaning of the term "enlistment service" to include both the volunteer and draft service. In the Selective Service law a man, other than an officer, enrolled in the Army through the process of registration and selective draft under that law, is usually referred to as an "enlisted" man. Thus section 1 provides, first, for an increase of the Regular Army; second, for draft of members of the National Guard; and third, as follows:

> To raise by draft as herein provided, organize and equip additional force of five hundred thousand *enlisted* men.

References to enlisted men as part of the draft Army in other sections of the Selective Service law are equally unmistakable. The third paragraph of section 1 contains the following sentence:

> The machine-gun companies organized under this section shall consist of such commissioned and *enlisted* personnel and be equipped in such manner as the President may prescribe * * *

The sixth paragraph provides:

> * * * Such organizations shall be o
> in the manner provided in the third par
> of this section, and *enlisted men* n
> assigned to said organizations from
> the forces herein provided for or rai
> selective draft as by this act provided.

The seventh paragraph provides for volunt
listment of not to exceed four Infantry divisio

Section 10 provides:

> That all officers and enlisted men
> forces herein provided for other than the
> lar Army shall be in all respects on the
> footing as to pay, allowances, pensions
> cers and enlisted men of corresponding
> and length of service in the Regular
> * * *

Section 12 provides:

> That the President * * * is auth
> to make such regulations governing the
> bition of alcoholic liquors in or near m
> camps and to the officers and enlisted n
> the Army * * *

The act of October 6, 1917, c. 81, 40 Stat. 384
vides:

> The Secretary of War is hereby auth
> to permit * * * any officer or *e*
> man on the active list of the Army, *
> to make allotments of his pay for the su
> of his wife * * *

The enlisted man there described clearly inc
the drafted soldier below the grade of officer, as

the language of the Soldiers' Insurance Act of October 6, 1917, c. 105, 40 Stat. 398, as follows:

> (P. 402.) SEC. 200. That the provisions of this article (relating to allotments and family allowances) shall apply to all *enlisted* men in the military or naval forces of the United States.
>
> (P. 405.) SEC. 300. That for death or disability resulting from personal injury suffered or disease contracted in the line of duty, by any commissioned officer or *enlisted* man * * * the United States shall pay compensation * * *
>
> (P. 409.) SEC. 400. That in order to give to every commissioned officer and *enlisted* man * * * greater protection for themselves and their dependents than is provided in Article III, the United States * * * shall grant insurance * * *

The act of March 16, 1918, Public, No. 105, Sixty-fifth Congress, is also broadly inclusive. The act authorizes the Secretary of War—

> to grant furloughs to *enlisted* men of the Army of the United States * * * to permit said *enlisted* men to engage in civil occupations and pursuits.

The Army appropriation act of July 9, 1918, Public No. 193, Sixty-Fifth Congress, uses the term "enlisted man" in the same comprehensive sense. On page 8 it provides:

> *Enlisted* men of the line: For pay of one million nine hundred and sixty-four thousand three hundred and seventy-six enlisted men of the line, $776,458,721.04.

See also page 40 of the Army appropri
providing for claims for loss of private pro
longing to officers and enlisted men. P
these war statutes, "enlisted" includes all m
than officers, who become members of t
either by volunteering or draft.

Certain analogies in the Civil War draft l
firm this view. The above-mentioned act of
1863, contained a section, namely, sec
directed against interference with the draft,
by force applied to the draft officers or force o
applied to the military eligible. That sect
as follows:

> That if any person shall resist any
> men enrolled under this act into th
> of the United States, or shall counse
> any persons to resist any such draft;
> assault or obstruct any officer in mak
> draft, or in the performance of any s
> relation thereto; or shall counsel any
> to assault or obstruct any such of
> shall counsel any drafted men not to
> at the place of rendezvous, or willfu
> suade them from the performance of
> duty as required by law, such person
> subject to summary arrest by the
> marshal, and shall be forthwith deliv
> the civil authorities, and, upon co
> thereof be punished by a fine not ex
> $500, or by imprisonment not exceedi
> years, or by both of said punishments.

Experience had developed that the section
cover attacks upon the registration or, as th

then called, enrollment officers, and in a supplementary statute, the act of February 24, 1864, c. 13, 13 Stat. 6, section 12, Congress provided:

> That any person who shall forcibly resist or oppose any enrollment, or shall incite, counsel, encourage, or who shall conspire or confederate with any other person or persons, forcibly to resist or oppose any such enrollment; or who shall aid or assist, or take any part in any forcible resistance or opposition thereto; or who shall assault, obstruct, impede, or threaten any officer or other person employed in making or aiding to make any such enrollment, or employed in the performance, or aiding in the performance, of any service in any way relating thereto, etc., shall, upon conviction, be punished by fine not exceeding $5,000; or by imprisonment not exceeding five years; or both of said punishments, in the discretion of the court. And in cases where such assaulting shall produce the death of such officer or other person, the offender shall be deemed guilty of murder, and upon conviction, etc., be punished with death, etc. And nothing in this section shall be construed to relieve the party offending from liability, under proper indictment or process, for any crime against the laws of a State.

In *United States* v. *Scott*, *supra*, this court held that this section 12 supplemented and did not modify section 25 of the earlier law. The Selective Service Act of 1917 provided for raising the new armies by both volunteering and draft; but provision

against obstruction of this process was not placed in the Selective Service Act itself, but in the Espionage Act passed a few weeks later. This Espionage Act was obviously designed to protect the whole military program against all types of interference therewith; and it is a reasonable inference that in the phrase "obstruct the recruiting and enlistment service" Congress intended to cover all willful interference with the process of raising of the Army, including both volunteer and draft process and including the types of interference which had been enumerated in the Civil War draft laws.

The Espionage Act was pending at the same time as the Selective Service Act and was finally passed a few weeks later; and, taking into consideration the exigency which produced these statutes, their purpose, the meaning given to the word "enlisted" in the Selective Service Act, and the fact that the new armies were being raised both by voluntary enlistment and draft, there can be no doubt that "obstruct the recruiting and enlistment service" was intended to cover all willful obstruction of the process of raising the armies, both volunteer and draft, not already covered by previous statutes.

As his audience contained both men subject to the draft and men eligible as volunteers, the evidence and verdicts of the jury show the defendant to have been guilty, whether the phrase under discussion be given the narrower meaning given it by the trial court or the broader meaning claimed by the Government.

V.

The constitutional question discussed by defendant not necessarily involved in this case—No infringement of first amendment in conviction of defendant.

(A) RIGHT OF FREE SPEECH NOT ABSOLUTE—SUBJECT TO WELL-RECOGNIZED EXCEPTIONS.

The defendant seems to contend that the first amendment of the Constitution creates a sort of field of immunity from Federal interference for all exercise of the vocal organs, as distinguished from the other parts of the human organism; and likewise a field of immunity from Federal interference of all products of the printing press as distinguished from other human contrivances. The history of criminal and constitutional law demonstrates the fallacy of any such conception. Many Federal crimes, sanctioned by the courts, consist exclusively of the use of the spoken, written, or printed word. For instance, the crime of fraud in its various phases is generally committed exclusively by means of the written or spoken word. Conspiracy frequently does not get beyond the use of spoken or written words. Further concrete illustrations are hardly necessary. There can be no doubt that punishment may be administered for causing an evil or danger to public safety or welfare by means of the written or spoken word, as well as by the use of other human faculties or products.

2 Story Constitution of the United States, 5th ed., pp. 634, 635, says:

> That this amendment was intended to secure to every citizen an absolute right to speak, write, or print whatever he might please, without any responsibility, public or private, therefor, is a supposition too wild to be indulged in by any rational man. This would allow every citizen to destroy at his pleasure the reputation, the peace, the property, and even the personal safety of every other citizen. A man might, because of mere malice or revenge, stir up rebellion and treason even against the Government itself. * * * It is plain, then, that the language of this amendment imports no more than that every man shall have the right to speak, write, and print his opinions on any subject whatsoever without any prior restraint so always that he does not disturb the public peace, or attempt to subvert the Government.

Robertson v. *Baldwin*, 165 U. S. 275, where this court at page 281 says:

> The law is perfectly well settled that the first ten amendments to the Constitution * * * were not intended to lay down any novel principles of government, but simply to embody certain guaranties and immunities which we had inherited from our English ancestors and which had from time immemorial been subject to certain well-recognized exceptions. * * *

In the recent case of *Toledo Newspaper Co.* v. *United States*, 247 U. S. 402, 419, dealing with the subject of the obstruction of justice by means of newspaper articles, this court said:

> We might well pass the proposition by because to state it is to answer it, since it involves in its very statement the contention that the freedom of the press is the freedom to do wrong with impunity and implies the right to frustrate and defeat the discharge of those governmental duties upon the performance of which the freedom of all, including that of the press, depends. The same guarding and fructification of free and constitutional institutions is the very basis and mainstay upon which the freedom of the press rests, and that freedom therefore does not and can not be held to include the right virtually to destroy such institutions. It suffices to say that, however complete is the right of the press to state public things and talk them, that right, as every other right in human society, is subject to the restrictions which separate right from wrong doing.

(B) CONSTITUTIONAL GUARANTY DOES NOT INCLUDE INTENTIONAL INCITEMENT TO VIOLATION OF LAW—DEFENDANT CHARGED WITH SUCH INCITEMENT AND FOUND GUILTY THEREOF.

In the sentence on page 71 of his brief, reading—

> * * * Beyond purposeful incitement to specific unlawfulness on the part of others, there is no power in Congress to make public

> utterances criminal, under any exigency, or as an incident of any express power granted to Congress under the Constitution—

the defendant admits that intentional incitement to violations of law by others does not fall within the constitutional immunity. But "purposeful incitement to specific unlawfulness on the part of others" is just what the defendant was charged with in this case, and the jury found him guilty. The charge against him was that of attempting to cause violations of the Selective Service and other laws relating to military service on the part of men subject to those laws.

The defendant seems to contend that as he did not express this unlawful advice in words so direct, plain, and unmistakable as to leave no room whatever for the slightest thought or intellectual process on the part of the jury, no need of any process of inference whatever, the constitutional immunity applies to his speech. This means that the Constitution renders the Nation powerless to punish any incitement to lawlessness, however intentional and however effective, so long as it is concealed in veiled, indirect, or rhetorical language.

This contention is, of course, not sustainable. It was discussed by the Circuit Court of Appeals for the Second Circuit in *Masses Publishing Co.* v. *Patten,* 246 Fed. 24. That case also involved the constitutionality and interpretation of section 3, Title I, of the Espionage Act and is quite analogous to the case at bar in its issues both of fact and law.

The lower court held that certain articles and cartoons published in The Masses could not be said to violate the Espionage Act and enjoined the Postmaster from barring them from the mails. The quotations on pages 65–69 of the defendant's brief are from the opinion rendered by the lower court. This decision was, however, reversed by the Court of Appeals, which, speaking through Judge Rogers, said on page 37 of the report:

> * * * The district judge thought no crime had been committed, and that the magazine was therefore mailable, because the publicatiou did not in so many words directly advise or counsel a violation of the act. He declared that—
>
> "If one stops short of urging upon others that it is their duty or their interest to resist the law, it seems to me one should not be held to have attempted to cause its violation. If that be not the test, I can see no escape from the conclusion that under this section every political agitation which can be shown to be apt to create a seditious temper is illegal. I am confident that, by such language, Congress had no such revolutionary purpose in view."
>
> This court does not agree that such is the law. If the natural and reasonable effect of what is said is to encourage resistance to a law, and the words are used in an endeavor to persuade to resistance, it is immaterial that the duty to resist is not mentioned, or the interest of the persons addressed in resistance

is not suggested. That one may willfully o
struct the enlistment service, without advisi
in direct language against enlistments, a
without stating that to refrain from enli
ment is a duty or in one's interest, seems to
too plain for controversy. To obstruct t
recruiting or enlistment service, within t
meaning of the statute, it is not necessa
that there should be a physical obstructio
Anything which impedes, hinders, retards, r
strains, or puts an obstacle in the way of r
cruiting is sufficient. In granting the st
of the injunction until this case could be hea
in this court upon the appeal Judge Hou
declared that—

"It is at least arguable whether there ca
be no more direct incitement to action tha
to hold up to admiration those who do ac
Oratio obliqua has always been preferred b
rhetoricians to oratio recta; the Beatitud
have for some centuries been considered highl
hortatory, though they do not contain th
injunction, 'Go thou and do likewise.' "

With this statement we fully agree. Mor
over, it is not necessary that an incitement t
crime must be direct. At common law th
"counseling" which constituted one an acce
sory before the fact might be indirect. Se
Wharton's Criminal Law (11th ed.), sec. 26
Bishop lays down the rule thus:

"Every man is responsible criminally fo
what of wrong flows directly from his corrup
intentions. * * * If he awoke into actio
and indiscriminate power, he is responsible
If he gave directions vaguely and incautiously

> and the person receiving them acted according to what he might have foreseen would be the understanding, he is responsible." 1 Bishop on Criminal Law, sec. 641.

Circuit Judge Ward in his concurring opinion, stated "Advice to resist the law may be indirect as well as direct."

(c) CHARGE OF COURT ON ISSUE OF DEFENDANT'S PURPOSE AND INTENT WAS FREE FROM ERROR AND FULLY PROTECTED DEFENDANT'S RIGHTS.

The question of the defendant's intent or purpose—that is, the issue between the Government's charge of unlawful purpose and defendant's defense of lawful purpose, was placed by the court before the jury in a manner so clear and so fair to the defendant, that he does not and could not complain of the charge in this respect. The court told the jury (R. 279–280):

> In passing upon the question of specific intent, I wish to say something additional thereto. Disapproval of war is, of course, not a crime, nor is the advocacy of peace a crime under this law, unless the words or utterances by which the expression or advocacy is conveyed shall have been willfully intended by the person making them to commit the acts forbidden by this law, and, further, not even then unless the natural and reasonably probable tendency and effect of such words and language as he may use will have the effect and consequences forbidden by the law.

Every citizen, I say to you, notwithstandin
the espionage law, has the right, withou
intending to cause insubordination, disloyalt
or refusal of duty, or without intending t
obstruct the recruiting or enlistment servic
of the United States, or without intending t
resist the United States, or to promote th
cause and success of its enemies, or oppose th
cause of the United States, to discuss, criticiz
or disapprove of any law proposed or in exist
ence, or of any policy proposed or in existence
made for the purpose of carrying on the war

If you shall find from the evidence here tha
the defendant did nothing more than that by
this public speech and utterance, and intended
nothing more than that by this public speech
and utterance; or even if you find that he
intended more than that, but the natural and
reasonably probable consequences of what he
said and did would be to produce no other
result or effect in the minds of his hearers,
then he is not guilty, and it will be your duty,
in the discharge of your oath, to find him not
guilty.

If the conscious purpose of the defendant
was only to state the truth as he saw it, to
convey information to his fellow citizens,
with the object only of bringing about the
reconstruction or reshapement, by peaceful,
ordinary methods, of the national policy in
accordance with what he believed to be the
right and correct view of the national policy,
and that he did not, in so doing, have the intent
willfully to do any of the prohibited acts, he
would not, in that event, be guilty, and it

> would be your duty also, to return a verdict of not guilty. An offense under this law, as I have said to you, and I repeat, is committed only when the defendant has the specific, willful, criminal intent, such as has been defined, and the words and utterances have a natural and reasonably probable tendency to cause the results which have been forbidden by these provisions of the espionage law.

(D) ISSUE THEREFORE NARROWS DOWN TO SUFFICIENCY OF EVIDENCE—NOT A CONSTITUTIONAL QUESTION—EVIDENCE AMPLY SUPPORTS VERDICT.

The Canton speech being, to say the least, capable of an interpretation as an "incitement to specific unlawfulness on the part of others," and the court having fairly left to the jury the question whether it was such and was "purposeful," the defendant would seem to be reduced to the contention that the evidence does not support the verdict. The sentences on page 64 of his brief reading—

> Our contention here is that the pleadings, rulings on evidence, and instructions have led to a sedition conviction under a thin disguise of a charge of actual military obstruction by means of words spoken to the Canton audience, and that this conviction can not be sustained under any unequivocal application of the first amendment.
>
> * * * The conclusion is irresistible that in spite of the cloak of military appropriateness given by a free use of the phraseology of

> the Espionage Act, the conviction of Mr. rests squarely upon his "seditious tempe and nothing else—

show his recognition of this position in which logically placed. The sufficiency of the evidenc however, not a constitutional question. A co tutional question is, therefore, not necess involved in this case.

No lengthy review of the evidence is require show that it amply supports the verdict. At a of extreme military crisis in a great war, the def ant, an adherent of a platform which advoc uncompromising resistance to war service, deliv an eloquent address to a working-class audience. was the announced speaker of the occasion, and speech was a long one, too long to be consid merely an impulsive utterance. The internati Socialist movement was described as based upon principle of a bitter conflict between the wor classes and others and the war as an instrumenta devised and used by these others in this conf The audience was told "there is but one thing you have to be concerned about, and that is that keep foursquare with the principles of the in national Socialist movement." Men who had b convicted or jailed for obstruction of the milit service were held up to praise and emulation martyrs on the workers' side of this conflict, and held forward as preferable to any submission to service of their enemies; that is, service in the v Refusal to submit would be called treason, but

would be treason to the enemy, that is, the exploiting classes, not treason to themselves, the workers; and their duty is to be true to themselves. These sentiments can have but one meaning, the meaning attributed to them by the jury. At least the evidence amply supports the verdict. The fact that the defendant may have joined this unlawful appeal with a lawful appeal to join the Socialist Party does not relieve him from the consequences imposed by the law.

(E) CONSTITUTIONAL GUARANTY OF FREE SPEECH DOES NOT GRANT IMMUNITY FOR DELIBERATE OBSTRUCTION OF PROCESS OF RAISING ARMY, WHETHER BY VOLUNTEERS OR DRAFT.

The court's charge to the jury on the fourth count of the indictment does, however, raise a constitutional question which, though for the above reasons not necessarily involved in this case, should, for the sake of completeness, be discussed. The court in effect charged the jury that willful obstruction of volunteering falls within the expression "obstruct the recruiting and enlistment service." The question may be stated in this way: The country being at war and engaged in raising an enlarged Federal Army, both by draft and by volunteer service, does the first amendment of the Constitution prohibit Congress from penalizing a public address of a nature calculated to and actually intended to obstruct the process of raising the volunteer portion of this Army by inducing men of military age not to volunteer?

Congress is expressly granted the power to
war and raise and support armies. The po
protect the process of raising these armies is
sarily implied. The Government contends th
power, so vital to the Nation and so inherent
right of national self-preservation, includ
power to punish willful obstruction of that p
whether that obstruction be by spoken or
word or by other means.

The prevailing view in the United States is th
constitutional guaranty of a free press is di
against a system of license or censorship pr
to publication and does not relate to immunity
punishment. This view is often referred to
Blackstone doctrine, based on the passage
4 Blackstone Commentaries, 151, reading:

> * * * freedom of the press *
> "consists in laying no previous rest
> upon publications, and not in freedom
> censure for criminal matter when publ
> * * * To subject the press to the restr
> power of a licenser, as was formerly
> both before and since the revolution,
> subject all freedom of sentiment to the
> judices of one man, and make him the
> trary and infallible judge of all controv
> points in learning, religion, and governme

In *Rex* v. *St. Asaph*, 3 T. R. 428, (note a)
Lord Mansfield said: "The liberty of the
consists in printing without any previous lic
subject to the consequence of law."

That view has been sustained by this court in *Patterson* v. *Colorado* (1907), 205 U. S. 454, where, speaking through Mr. Justice Holmes, this court said:

> The main purpose of such constitutional provisions is to "prevent all such previous *restraints* as had been practiced by other governments," and they do not prevent the subsequent punishment of such as may be deemed contrary to the public welfare.

The court then proceeds to the length of saying:

> The preliminary freedom extends as well to the false as to the true; the subsequent punishment may extend as well to the true as to the false.

This view is to some extent inapplicable to free speech, as a licensing or censorship system can not, in the nature of things, be applied to the spoken as distinguished from the printed word. Some authorities hold that the constitutional provision grants some degree of immunity from punishment and restricts the power of the legislature to the field of those crimes which were punishable according to common-law standards. But all authorities agree that there is no immunity from punishment of that which is generally recognized as harmful, such as obscene, libellous, and seditious matter. For instance, *Cooley on Constitutional Limitations*, 6th Ed., 441–442, says:

> * * * we understand liberty of speech and of the press to imply not only liberty to

> publish, but complete immunity from legal censure and punishment for the publication, so long as it is not harmful in its character, when tested by such standards as the law affords. For these standards we must look to the common law rules which were in force when the constitutional guaranties were established * * *.

Warren v. *United States*, 106 C. C. A. 156, where the court holding that unrestrained use of the mails was not guaranteed by the first amendment said at page 159:

> Liberty and freedom of speech under the Constitution do not mean the unrestrained right to do or say what one pleases at all times under all circumstances * * *. The very idea of government implies some imposition of restraint in the interest of the general welfare, peace, and good order.

See also—

Ex Parte Jackson, 96 U. S. 727.

In *People* v. *Most*, 171 N. Y., 423, at p. 432, the court, speaking of the constitutional guaranty of free speech said:

> It places no restraint upon the power of the legislature to punish the publication of matter which is injurious to society according to the standard of the common law. It does not deprive the State of the primary right of self-preservation. It does not sanction unbridled license, nor authorize the publication of articles prompting the commission of murder or the overthrow of government by force. All courts

> and commentators contrast the liberty of the press with its licentiousness, and condemn as not sanctioned by the constitution of any State, appeals designed to destroy the reputation of the citizen, the peace of society, or the existence of the Government. (Story on the Const. sec. 1878; Cooley on Constitutional Limitations, 518; Ordronaux on Constitutional Legislation, 237; Tiedeman on Police Powers, sec. 81.)

Seditious utterances or libel was a well-recognized common-law crime, and, therefore, outside the reach of the "abridgement" prohibited by the Constitution. The defendant asserts that the Sedition Law of 1798 was held to be unconstitutional and seeks to have the Espionage Act condemned as a revival of that discredited statute. But the clauses of the Espionage Act which are involved in this case bear no analogy whatever to the objectionable features of the old Sedition Law. That law sought to punish libelous attacks on the Government. The Espionage Act carefully avoids that pitfall. It does not seek to punish attacks on the Government, however malicious or libelous. The clauses of the Espionage Act for which this case is based relate to interference with the process of raising armies and represent an exercise by Congress of its constitutional power to raise armies.

But, as related to the question of the scope of the powers of Congress when the exercise of one of its powers may affect the freedom of speech or press, the fact that seditious utterances were, at common law, recognized as within the scope of lawful legis-

lative domain is pertinent. So, without the slightest admission of any analogy between the Sedition Law and the Espionage Act, we beg to deny the defendant's assertion that the former statute was generally held to be unconstitutional. The contrary is the truth.

2 Story on the Constitution, 5th Ed., pages 643, 644, in commenting upon that statute says:

> This act was immediately assailed as unconstitutional. Its constitutionality was deliberately affirmed by the courts of law and in a report made by a committee of Congress. It was denied by a considerable number of States, but affirmed by a majority.

Dean Roscoe Pound, of the Harvard law school, in an article in the Harvard Law Review of April 1916, page 640, entitled "Equitable Relief Against Defamation," being one of the articles contributed to that Review in celebration of the seventy-fifth birthday of Mr. Justice Holmes, discusses the subject of the relation of the freedom of the press to the right of injunctive relief against libel, referring particularly to the case of Brandreth *v.* Lance, 8 Paige 24. In the course of that discussion, at page 650 he gives the following summary of the scope of the constitutional guaranties:

> We are brought, then, to the question which is the crux of the matter in this country, namely, what is an infringement of freedom of the press and freedom of speech, as guaranteed by the bills of rights in American constitutions? Historically these provisions

are connected with censorship of publications in England. At first this censorship was exercised by the Crown, later by the Star Chamber, and finally by Parliament, which provided for the censoring of all written publications down to 1694, when the statute for the time being expired and was not renewed. Writers of the end of the eighteenth century took this obsolescence of the censorship as declaratory of a natural or common-law principle of liberty of the press, as one of the rights of Englishmen. Accordingly our bills of rights guarantee freedom of speech and of publication as an individual natural right. Blackstone, whose views were generally accepted as common law in this country when the bills of rights were framed, holds that liberty of the press means simply the absence of restraints upon publication in advance as distinguished from liability, civil or criminal, for libelous or improper matter, when published. Story contends that it was intended to guarantee liberty of publishing the truth, with good motives and for proper ends, and approves a distinction between political publications, criticisms, and general discussions on the one hand and mere defamation of private individuals on the other hand. A third view is taken by Cooley. He considers that the bills of right guarantee "not only liberty to publish but complete immunity from legal censure and punishment for the publication so long as it is not harmful in its character, when judged by such standards as the law affords." In other words, printing

and speaking are to be subject to general rules of law, not to administrative censorship or arbitrary legislative restriction. The cases are most nearly in accord with this view.

Of the three doctrines as to the scope of liberty of publication, only Blackstone's would justify the position taken in *Brandreth* v. *Lance*, namely, that there can be no preventive judicial justice as against defamation; that as to writing and speaking, all legal action must necessarily come after the act. But this view is open to obvious criticism. For if liability for any sort of publication which the legislature chooses to penalize may be imposed upon the publisher after the act, the result may easily be to effectually prevent indirectly and so establish a censorship and evade the guaranty. Blackstone's doctrine has usually been criticised as not going far enough in securing against imposition of liability after publication upon arbitrary or unreasonable grounds. Equally it goes too far in denying to the law all power of restraint before publication. Although its best title to consideration is in the history of the subject, it goes beyond what history indicates as the main purpose, namely, freedom from a régime of general censorship and license of printing.

No very clear line is to be found in the decisions. Excepting *Brandreth* v. *Lance* and the cases following it, Blackstone's view has been urged chiefly in dicta. So far as imposition of liability after publication interferes with freedom of publication, four limitations

are well established: (1) The constitutional provision does not guarantee the liberty to intimidate by speech and writing. If this limitation may be enforced preventively as well as by penalty or damages, there is sufficient support for the cases presently to be noted, where publication incidental to or as part of an unlawful system of coercion or intimidation was enjoined. It will be seen that the only courts which clearly hold to the contrary in the latter case are those of Missouri and Montana. But the decisions in the former jurisdiction are not very consistent. Although in *Marx* v. *Watson*, 168 Mo. 133, the court held that the constitution protected a power to intimidate through publication, in *State* v. *McCabe*, 135 Mo. 450, it held that the constitution did not protect a creditor in the power to compel a debtor to pay a just debt by publishing that it was unpaid and injuriously affecting the debtor's credit — even if the publication were true. In *State* v. *Shepherd*, 177 Mo. 205, the same court seems to adopt Story's doctrine. (2) The constitution does not protect the citizen in publishing immoral or indecent matter, nor guarantee such publication against prohibition by the legislature. All the courts seem to agree to this. (3) It does not give immunity for contempt in interfering with the course of justice. All courts are agreed as to this, though as we have seen, the sole American decision is against enforcement of this limitation preventively to secure a litigant against unlawful interference with his

right to obtain justice in the courts by threatening or prejudicial publications. It may be noted that this question was involved in the earliest reported suit to enjoin a libel. (4) The constitutional provision does not preclude restrictions upon publication dangerous to the conduct of military operations in time of war. *Ex parte Vallandigham*, 1 Wall. 243. In the foregoing cases the legislature may prohibit publication and impose adequate penalties to enforce the prohibition. Except for the matter of trial by jury, to be considered presently, the difference between this course and the finding of a court that a threatened publication involves gross and palpable violation of private rights, for which damages would be no remedy, followed by a contempt proceeding in case of violation, is not very substantial. It can not be denied that for the most part these limitations may be reconciled with the doctrine that all preventive interference with publication is prohibited. But that doctrine makes the guaranties merely formal and unless the language of the bill of rights in a particular jurisdiction clearly adopts Blackstone's view, it might well be held that there are limitations on the guaranty, whether invoked against preventive or against remedial justice.

Surely the raising of the Army is an important part of military operations.

Coming to the judicial decisions on the Espionage Act itself, all courts, both District and Appellate, which have passed on the question at all, have

upheld the constitutionality of section 3, Title I, when interpreted, as by the trial court in the instant case.

See

United States v. *Prieth, 251 Fed. R., 946.*
United States v. *Pierce, 245 Fed. R., 878.*
O'Hare v. *United States, 253 Fed. R., 538.*

No authority can be adduced for the defendant's contention that there is a constitutional right to obstruct by speech the exercise of the power to raise armies so long as the speaker does not urge a violation of law. If, as has been held by this court in the recent case of *Toledo Newspaper Co.* v. *United States*, 247 U. S., 402, punishment may constitutionally be meted out for a wilful obstruction of the administration of justice, it is difficult to see why the administration of the war powers of Congress is not entitled to the same protection. The events of 1917 showed that war may become as essential as justice to the preservation of our democratic form of government. If, as recently held by this court in *The Selective Draft Cases*, 245 U. S., 366, Congress has the power, for the waging of war which it deems justified, to deprive a man of his liberty, even of his life, for the purpose of raising an Army which it deems essential, surely, for this same purpose of raising an Army, Congress may require the citizen to refrain from a deliberate, wilful obstruction of the process of obtaining the requisite number of fighting men. It is only wilful obstruction which the statute

seeks to reach, and the court so told the jury
this case. The power of Congress to reach s
wilful obstruction is inherent in the right of s
preservation, and, as stated by this court in *Tu*
v. *Williams*, 194 U. S., 279, 294, "As long
human governments endure, they can not be
nied the right of self-preservation." To the
fendant's contention that he has the constitutio
right to obstruct the raising of the Army, so l
as he restricts himself to speech or press, t
court might well give the answer which it g
to the similar contention put forward in the *To*
Newspaper Co. v. *United States*, supra:

> We might well pass the proposition
> because to state it is to answer it, since
> involves in its very statement the content
> that the freedom of the press is the freed
> to do wrong with impunity and implies
> right to frustrate and defeat the discharge
> those governmental duties upon the perfo
> ance of which the freedom of all, includ
> that of the press, depends. The same gua
> ing and fructification of free and consti
> tional institutions is the very basis and ma
> stay upon which the freedom of the p
> rests, and that freedom therefore does
> and can not be held to include the ri
> virtually to destroy such institutions. It
> fices to say that, however complete is
> right of the press to state public things
> talk them, that right, as every other right
> human society, is subject to the restricti
> which separate right from wrong doing.

CONCLUSION.

The judgment of the court below should be affirmed.

JOHN LORD O'BRIAN,
The Special Assistant to the Attorney General for War Work.

ALFRED BETTMAN,
Special Assistant to the Attorney General.

JANUARY, 1919.